IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 868 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HUMJI RATNA BHABHAR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 868 of 1994

MR JC SHETH for Petitioners No. 1-2

MR UM SHASTRI for Petitioner No. 1

MR KP RAVAL APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 03/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

1. The appellants-accused are the real son and father. They were tried for the offence punishable under Section 302 read with 114 IPC before the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions case No.211/91 for committing murder of deceased Makna. After appreciating the evidence of prosecution witness, the learned Judge vide impugned judgment dated 19th August, 1994, found both the accused guilty for the offence under Section 302 read with 114 IPC and sentenced them to suffer life imprisonment which has been challenged in this appeal by both the appellants-accused.

2. Complainant Lalubhai son of deceased Maknabhai lodged F.I.R. in the afternoon of 5th January, 1991, before the Garbada police station at Exh.18. It is stated in the F.I.R. that yesterday i.e. 4th January, 1991, Veersinh Galji Shangada belonging to his native who is presently staying at village Nehlav came to the house of his uncle Ratna Boda accused No.2. Accused No.1 Humji Ratna, Ratna Boda accused No.2, Veersinh Galji and one Lalu Vala Surya of his village were gathered at the house of accused Ratna Boda. In the early morning hours at 2.00 a.m. on 5th January, 1991 his uncle Ratna Boda called his father Makna at his house and accordingly his father went to his house. All of them were sitting and talking at the house of accused Ratna Boda. After sometime, his uncle Ratna Boda and Humji Ratna son of Ratna Boda started abusing his father. Thereupon, his father asked them that why they are abusing him. Because of that both the accused got excited and told his father that why he was not bringing liquor (Daru) and continued to abuse him. Hearing this complainant Lalu ran from his house alongwith neighbour Nagra Jyoti. They went near the house of accused Ratna Boda. At that time, accused Ratna Boda hit his father with a stone and because of that Makna fell in the compound of Ratna Boda. At that time accused Humji Ratna threw stone at his father which hit deceased Makna. Thereupon he got up to beat his father and ran towards him. However, because of the stone injury to his father blood was oozing and his father and was not able to speak. Thereafter he (Lalu), Nagra Jyoti and Humji Ratna (accused) lifted his father for taking him to his house. His mother Jokhli also came there running. His father was removed to his house and they tried to give water, but his father could not have it and died. Seeing that accused Humji Ratna ran away from there. Thereafter, he has come to the police station to lodge the complaint.

3. Complainant - Lalu Makna P.W. 4 at Exh.17, however, has tried to improvise his version before the

Court by saying that his father was asked by the accused to bring two bottles of liquor and then accused Ratna Boda gave push to the deceased and accused Humji Ratna threw stone at his father which hit him on the head near the neck. In his cross-examination, he has stated that the incident had happened at 10.00 p.m. in the night; whereas as per the F.I.R. the incident took place at 2.00 a.m. in midnight. He has also admitted that there is a distance of about half km. between his house and the house of the accused Humji Ratna and in between there are caves (kotars). There are open fields in front of kotars and there were no lights in falia. Here, he has admitted that his father used to take liquor and he has denied the suggestion that on the day of incident he had consumed liquor. In cross he has come out with totally different story that when he went to the house of the accused - Humji Ratna, scuffle was going on for half an hour. At that time, about eight to ten persons came there. All of them left after Nagra Jyoti gave money. He has denied the suggestion that after his father came back he quarreled with them. Once stone was thrown at him, he fell down there and then. He requested not to beat his father, but except him no one intervened. He has also denied the suggestion that because of scuffle his father fell in the cave. According to him his father fell in the osari (compound). After the quarrel, he left his father there and went to sarpanch to inform about the incident and later on on the next day at about 8.00 a.m. he went to the police station to lodge complaint. He did not go to lodge the complaint before the police in the night. He had seen the stone which was about two to three Kg. weight. His clothes were also having blood stain and there was blood on it. While telling him all of a sudden accused Humji Ratna hit stone at his father. He has denied the suggestion that accused - Humji Ratna came to drop his father at his residence, when his father fell in cave. However, he admitted in his cross-examination that he had not seen his father felling in Kotar, as they came later on. He has also admitted that Humji Ratna his brother-in-law came at his residence with his father.

4. The entire prosecution case stands upon the sole oral testimony of complainant Lalu Makna. He is a close relative of deceased Makna, He was his son, therefore, his evidence is required to be scrutinised with great care and caution. We have reproduced his first version before the police after the incident and also his version in the chief-examination as well in cross. According to Lalu he lodged F.I.R. at 8.00 a.m. on 5th January, 1991 before the police regarding the incident which took place

at 2.00 a.m. in the midnight on 5th January, 1991; whereas before the Court in his cross-examination he stated that the incident took place in the night of 4th January, 1991 at 10.00 p.m. Thus, there is a material contradiction regarding the time of incident. As per his F.I.R. both the accused - Ratna Boda as well as Humji Ratna gave stone blows to his deceased father - Makna; whereas before the Court he changed the story and stated in his chief examination that accused - Ratna Boda gave push to his father and accused - Humji Ratna hit his father with stone. As per the F.I.R. accused - Humji Ratna came to his house alongwith his father and when his father died, Humji Ratna ran away. But in his cross-examination initially he denied that Humji Ratna came to drop his father at his residence, but later on he had to admit that Humji Ratna and his brother-in-law came there alongwith his father to drop his father at his residence. As per his version, before the Court in his cross-examination he has stated that stone was about two to three Kg. weight, but it was only half Kg. weight. According to him, stone was having blood stains, but no blood stains were found on the stone which was alleged to have been used by accused - Humji Ratna. Admittedly, there was no previous enmity between the accused and the deceased and there is no evidence that their relations were strained. Accused as well as deceased were also closely related. Accused Ratna Boda was brother of deceased Makna and accused Humji Ratna was nephew of deceased Makna. It was a dark night, therefore, it would not be possible for witness Makna to see the incident. On the contrary, the suggestion made in the cross examination that deceased Makna fell down in the kotar while going to his house and because of that he received head injury cannot be ruled out. The conduct of the accused - Humji who alleged to have been given stone blow shows that no such incident must have happened and deceased - Makna must have fell down in kotar while going back to his house in the midnight and because of that he was removed by accused - Humji Ratna and others at his residence. In our considered opinion if such incident as narrated by witness Lalu in his evidence in the Court had occurred then, the complainant without wasting any further time would have approached the police immediately. The conduct of witness Lalu in not going to police station during the night was also doubtful. It appears that because of some reason, Lalu must have decided to lodge complaint and tried to falsely involved both Ratna Boda and his son Humji Ratna and it is only because of that the initial version in F.I.R. that both accused - Ratna Boda and Humji Ratna gave stone blows to the deceased was later on changed in the Court and it was

stated by Lalu that accused - Ratna Boda gave push and Humji Ratna gave stone blow to the deceased. The evidence of Dr.Rajendra K. Shrivastava shows that there was no fracture but deceased died due to the injury No.17 and according to him the injury was caused due to fall in cave cannot be ruled out. In that view of the matter, it would be rather risky to rely upon the sole oral testimony of the most interested witness Lalu who was the son of deceased Makna. More particularly, when his evidence was not corroborated by any independent witness.

5. It may be stated that the prosecution has tried to examine P.W.5 Nagra Jyoti as another eye witness. But he has turned hostile. In fact, he has clearly stated that when he had gone, deceased was lying in kotar. Thus his evidence on this point that the deceased was lying in Kotar strengthens the story that possibly due to fall, the deceased must have received the injury on his head. The prosecution has examined one more witness Jokhni widow of deceased Makna, but she had not witnessed the incident. As per her evidence when she was sleeping some persons came from the house of the accused and called her husband deceased Makna.

6. Thus in our considered opinion, the prosecution has miserably failed to prove its case against both the appellants beyond reasonable doubt for committing murder of deceased Makna. Therefore they are entitled for the benefit of doubt.

7. We may state that even if we had come to the conclusion that evidence of sole eye witness Lalu Makna was reliable and could have been acted upon for the purpose of conviction, then also in our considered opinion it would not have been a case under Section 302 IPC and it would be at the most case under Section 304 Part- I. because as per the evidence of Lalu scuffle lasted for about half an hour between the accused and the deceased and at that time accused - Humji Ratna gave stone blow. Accused Humji Ratna hit the deceased with stone. There was only one injury and there is possibility that it must have been due to grave and sudden provocation. Accused No.1 would have inflicted the injury to the deceased in the spur of moment, but later on recorded that it is a serious injury, therefore, accused - Humji must have with the help of his brother-in-law took the deceased Makna at his house. Thus it would be a case at the most under Section 304 Part- I and not under Section 302 IPC. Both the appellants-accused were in jail since last more than ten years since the date of offence i.e., 5th January, 1991.

They are in jail and therefore, even if we have come to the conclusion that both the accused are guilty for offence under Section 304 Part-I IPC then also we would have passed the order of sentence as already undergone.

8. However, as stated earlier, we are of the considered opinion that the prosecution has failed to prove its case against both the appellants-accused beyond reasonable doubt for causing death of deceased Makna and therefore, the judgement and order of conviction and sentence passed by the learned Judge convicting both the accused for the offence under Section 302 read with 114 IPC and sentencing them to suffer life imprisonment has to be quashed and set-aside.

9. Accordingly this appeal is allowed and the impugned judgment and order of conviction and sentence dated 19th August, 1994 passed by the learned Additional Sessions Judge, Panchmahals at Godhra in Sessions case No.211/91, holding the appellants-accused guilty for the offence under Section 302 read with 114 IPC and sentencing them to suffer life imprisonment is hereby quashed and set-aside. Both the appellants-accused are ordered to be released forthwith, if they are not required in any other case.

(B.J. Shethna, J.)

(D.P. Buch, J.)

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